

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
APRIL 11, 2003**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on April 11, 2003. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

**ROLL CALL**

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Member Ricky Wright. Commission Mike Joyner was not present for the meeting.

**MINUTES OF MARCH 14, 2003 MEETING**

The Chairman asked Commission Member Ricky Wright if he had any corrections or additions regarding the Commission minutes from the March 14, 2003, meeting. Commissioner Wright had no corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, the Chairman asked Commissioner Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright stated that he recused himself from case #31, Crowleys Old Favorites. The Chairman stated she found no conflicts of interest with regard to herself.

**I. HEARING CASES – 93 listed.**

Chief Deputy Counsel Fred Gregory stated that there were two contested cases on the agenda today. Assistant Counsel LoRita K. Pinnix was the attorney for case #1, Lincoln House. Ms. Pinnix stated there was no one present to speak on behalf of the applicant, no exceptions were filed and that Chief Administrative Law Judge Julian Mann, III upheld the decision to reject the application for permits. The Chairman made a motion to ratify Judge Mann's decision. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Assistant Counsel Timothy Morse was the attorney for case #2, Cristy Mexican Store. Mr. Gregory stated that Administrative Law Judge Beecher R. Gray heard the case and

recommended a 10-day suspension and pay a monetary penalty of \$500.00. Mr. Morse stated that the only other additional item that the Commission needed to know was that the respondent was sent a notice letting them know of the Commission meeting and that was returned undeliverable from the address that the respondent provided to us that was in their file. The Chairman made a motion to ratify Judge Beecher Gray's recommended decision. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred Gregory stated that there were five permittees present who wanted to be heard as follows:

#50- Newtons Southwest Restaurant and Bar – Mr. Gregory stated that Mr. Newton and Ms. Watson were present to speak on behalf of their establishment. Mr. Newton stated that they had been in operation for over 11 years and only once did they have a problem before. Mr. Newton stated that he was asking for leniency. He further stated if he had committed the infraction he wouldn't ask for leniency but he had people working for him and he had to depend on them. The Chairman asked both Ms. Watson and Mr. Newton if they knew that their employee was committing a violation (by purchasing liquor at a non-mixed beverages store). Mr. Newton stated that he didn't know that he was doing that, he only found out after it was too late. Ms. Watson had not joined the business yet as a partner. Mr. Newton said that the employee had forgotten to pick up the alcohol by the due date, so they went elsewhere and purchased the alcohol. Commissioner Wright asked Mr. Newton what had he done to make sure that this wouldn't happen again. Mr. Newton stated that now that Ms. Watson was part owner, either she or he would make sure that the employees went to purchase the alcohol at the proper time. The Chairman asked what happened to the employee who had committed this violation. Ms. Watson stated that he no longer worked in their establishment. The Chairman made a motion to modify the Offer in Compromise to 30-day suspension of permits, avoided upon payment of \$2,000.00. Seconded by Commissioner Wright. So Ordered.

#68- Ballards Crossroads Grill – Mr. Gregory stated attorney Glenn B. Lassiter, Jr. was present to speak on behalf of his client, Billy Ray Peaden. Mr. Lassiter stated that this was an undercover sting and the permittee fired the employee. He had not had a violation since holding permits in 1988. Mr. Lassiter stated that Mr. Peaden didn't sell enough alcohol to justify paying the fine and he would probably take the suspension. Mr. Lassiter asked the Commission to reduce the active suspension so that his client wouldn't lose his permits for 10 days. The Chairman made a motion to modify the offer to 7 days suspension, avoided upon a penalty of \$600.00. Seconded by Commissioner Wright. So Ordered.

1<sup>ST</sup> Offense Case #17- Denny's Grand Slam Sports Bar – Mr. Gregory stated that Mr. Kald, manager of the establishment, was present to speak. Mr. Kald stated

that the employee did check the ID, but he checked the year and not the month and that was where he dropped the ball. He stated that he was the managing partner. He also stated that this was the first time a violation had occurred. Mr. Kald further stated that an ownership change had occurred about four years ago, but the corporation remained the same. The Chairman stated that the Commission could not change the policy, therefore moved to ratify the offer that he signed, with no modification to it. Seconded by Commissioner Wright. So Ordered.

#46 – C Mart 4 – Mr. Gregory stated that Mr. Armistead Mauck, owner and employee of C-Mart Stores, was present to speak. Mr. Mauck stated that he wanted to share with the Commission what they had done in the past and what they planned to do to eliminate any type of infractions. He stated that the employee was fired once they became aware of what had happened. When she was hired she signed an alcohol and tobacco policy and it was witnessed. She watched a video, and then took a test, which she scored 100 on. She was also shown a sheet that showed what the penalty was for selling to a minor. He further stated that every Friday they send via fax, a reminder to make sure that they check ID's. Mr. Mauck stated that he had a letter pertaining to C-Mart's involvement within the community with the Lenoir County Initiative to Reduce Underage Drinking; that they hand carry a pink slip to the courthouse every time that they know of an infraction and they can put the slip in the file so that the judges know exactly what the minimum sentences are for underage sales and possession. Mr. Mauck presented the Commission with that information and asked for consideration. The Chairman made a motion to modify the penalty to 30-day suspension, avoided upon penalty payment of \$3,000.00. Seconded by Commissioner Wright. So Ordered.

1<sup>ST</sup> Offense Case #15 – Pine Needles Lodges and Country Club – Mr. Gregory stated that Mr. John Miller, hotel manager of Pine Needles Lodges and Country Club, was present to speak in regard to this establishment. Mr. Miller stated that the business has had their permits since 1985 and has been in business for 50 years. Mr. Miller stated that the employee did serve alcohol to a person who was with the minor, who was over 21 years old, but he stated that he did not sell alcohol to the minor, only to her companion. Mr. Miller further stated that the minor was later arrested for driving while impaired. Mr. Miller said that in light of this he was asking for consideration. Ms. Pinnix, assistant counsel for this case stated that the officer said that the minor told him that she had been consuming alcohol at Pine Needles Lodges and Country Club. The bartender admitted that he did serve her alcohol and didn't check her ID because she was with people that were over 21 years of age and he thought she was over 21 years old as well. The Chairman stated that the normal penalty had already been reduced from \$1,000.00 to \$500.00 because of the number of years that they have held permits.

Mr. Gregory stated that Mr. Tony Delilo, attorney for the permittee, was present along with Mr. Gene Robertson, owner of the Corner Bar. This case was on last month and the permittee was asking for reconsideration. The permits were turned in and cancelled. Mr. Delilo stated that the previous Offer in Compromise was accepted and permits were turned in. He further stated that Mr. Robertson was going to reapply as the sole proprietor, but Mr. Robertson's wife passed away recently and he had to take some personal time to get matters straight with his family. Mr. Delilo said that Mr. Robertson did apply for new permits as the sole proprietor and had all the paper work ready, but when the zoning and fire inspection was done they came back with a list of things that needed to be corrected totaling to about \$10,000.00. He further stated that Mr. Robertson didn't own the building, but he spoke with the owner and the owner was willing to make the repairs, but the repairs have not been completed yet. Mr. Delilo stated that he was asking the Commission if they would be willing to extend the surrender of the permits until 30 days or the next commission meeting. The Chairman asked Mr. Delilo who was Ronald Robertson. Mr. Delilo stated that he was Mr. Gene Robertson's son and that in 1998 he and his son incorporated the business. Mr. Ronald Robertson has nothing to do with the business. The Chairman made a motion to rescind the April 7, 2003 order and put this case on for May 9, 2003, but also moved that the offer in compromise for cancellation not be approved since Mr. Robertson will still be in business. The Chairman also asked Ms. Pinnix that she negotiate a different offer in compromise concerning the violations and get them on the May agenda. Ms. Pinnix stated that she could do that but wanted to know what the Commission would like to see as far as an offer. The Chairman stated that she thought the bar should pay some penalty for the violations. Ms. Pinnix stated that she would work on that. Seconded by Commissioner Wright. So Ordered.

The following cases are to be carried over to the May Commission meeting:

#31 – Crowleys Old Favorite  
#79 – Homewood Suites  
#83 – Corbins Bar and Grill

#### **REMAINING OFFERS IN COMPROMISE**

The Chairman made a motion to accept all other offers in compromise with the exception of #31, #46, #50, #68, #79 and #83 which had either been ratified earlier or continued. Seconded by Commissioner Wright. So Ordered.

The following is a list of violation cases, in which Orders were signed by the Chairman on April 11, 2003, pursuant to the Commission's authorizing resolution dated November 8, 2002:

Garrett Mini Mart – 602 East Main Street, Stoneville, NC 27048  
Triangle Station Country Store – 100 Triangle Road, Ruffin, NC 27326

Snack Corner – 1909 East Green Drive, High Point, NC 27260  
Stop and Go – 600 East Cumberland Street, Dunn, NC 28334  
Kyles 220 B P – 2554 Highway 200, Madison, NC 27025  
Ice Service Stores – 662 Haywood Road, Asheville, NC 28801  
T Mart Express – 100 South Wall Street, Benson, NC 27504  
Fisher's Grille – 608 North Elm Street, Greensboro, NC 27401  
Elizabeth's Pizza – 3605 Groometown Road, Suite 109, Greensboro, NC 27407  
Milanos Pizza and Subs – 3919-3921 New Bern Avenue, Raleigh, NC 27610  
Longhorn of Greensboro – 2925 Battleground Avenue, Suite A, Greensboro, NC 27408  
Pasttime Billiards and Pub II – 674 Stratford Boulevard, Kinston, NC 28501  
Amigos Mexican Restaurant – 1315 Bridford Parkway, Greensboro, NC 27407  
R J's Circle B – 5105 Fayetteville Road, Lumberton, NC 28358  
Pine Needles Lodges and Country Club – 1005 Midland Road, Southern Pines, NC 28387  
Han Dee Hugos 63 – 700 West Hwy 42, Clayton, NC 27520  
Denny's Grand Slam Sports Bar – 101 Wintergreen Drive, Lumberton, NC 28358  
Winn Dixie 908 – 1352 North Main Street, Fuquay Varina, NC 27526  
Vitos Italian Restaurant – 2258 Golden Gate Drive, Greensboro, NC 27405  
Greensboro Marriott Downtown – 304 North Greene Street, Greensboro, NC 27401  
Frank and Clara's Restaurant and Lounge – 1440 Salter Path Road, Indian Beach, NC 28575  
Fleming Family Fare 248 – 2300 Fleming Road, Greensboro, NC 27410

**II. ABC Store Location – Catawba County ABC Board - ABC Administrator**  
Michael Herring presented information regarding Catawba ABC Board requesting approval to open an additional ABC store inside the city limits of Hickory, NC. The reason for the new location is to improve accessibility to their residents by US Highway 321; this is one of Catawba's busiest roadways. The Catawba County ABC Board purchased the proposed property location on August 30, 2001, from SAAD Resources LLC. The nearest church is located .5 of a mile and the nearest school is 1.2 of a mile from the proposed location. Pursuant to ABC Commission Regulations, the 30 day Notice of Intent to open an ABC store was posted. To date no objections have been received to the proposed site. There is no conflict of interest. Mr. Herring made a recommendation to approve the location. The Chairman made a motion to approve the ABC store location. Seconded by Commissioner Wright. So Ordered.

**III. ABC Store Location – Lincoln County ABC Board – ABC Administrator**  
Michael Herring presented information regarding Lincoln ABC Board requesting to open a location in eastern Lincoln County. The site is a vacant lot containing .77 acres. It is identified at 7539 Waterside Crossing Boulevard, east of the main shopping complex. Griffin Brothers Acquisition LLC, currently owns the proposed site location and has entered into a Option to Purchase agreement with Lincoln

County ABC Board. There are three churches that are approximately one mile from the proposed site and the nearest school is approximately 1.8 miles from the proposed site. Pursuant to ABC Commission Regulations, the 30 day Notice of Intent to open an ABC store was posted. To date no objections have been received to the proposed site. There is no conflict of interest. Mr. Herring made a recommendation to approve the location. The Chairman made a motion to approve the ABC store location. Seconded by Commissioner Wright. So Ordered.

**IV. ABC Store Location – Fletcher ABC Board –** ABC Administrator Michael Herring presented information regarding Fletcher County ABC Board requesting approval of relocating to the proposed property located at 27 and 37 Rockwood Road, Fletcher, North Carolina. The Fletcher ABC Board is currently subleasing the present ABC Store located at 575-10 New Airport Road, Fletcher, North Carolina, with 3-6 years remaining on the landlords lease. They are concerned that they might lose the sublease and have to relocate. The Fletcher ABC Board purchased the proposed property in August 1997 from Thomas Eugene Robinson and Hazel Robinson. The nearest church is 1.7 miles and the nearest school is 3.7 miles from the proposed site. Pursuant to ABC Commission Regulations, the 30 day Notice of Intent to open an ABC store was posted. To date no objections have been received to the proposed site. There is no conflict of interest. Mr. Herring made a recommendation to approve the location. The Chairman made a motion to approve the ABC store location. Seconded by Commissioner Wright. So Ordered.

**VI. Request for Waiver – Venus Mart and Deli –** Assistant Administrator Doyle Alley stated that the two years with the temporary permits would lapse in July. The request is continued until that time.

**V. London Wine Man v. Renwood Winery, Inc. –** The attorneys for Renwood Winery, Inc. and London Wine Man, Inc. were present to speak on behalf of their clients. The attorneys introduced themselves as follows: Mr. Camden Webb and Mr. Keith Kapp, attorneys for London Wine Man; Mr. John Hasty, attorney for Renwood Winery and Mr. Shawn Minor, Chief Operating Officer of Renwood Winery. The Chairman asked Mr. Hasty if he had received a copy of the application file. Mr. Hasty stated that he received from Mr. Webb a letter that he had written to the Commission on January 13, 2003 that outlined eight enclosures that were submitted in a permit application on behalf of his client. He further stated that he had no objection to the Commission taking official notice of those records. The Chairman stated that with regard to the London Wine Man application dated January 13, 2003, that part of his motion was granted, however she felt that it wouldn't be appropriate to take official notice of an investigation report since it was not in evidence and was not a part of the record,

so that part of his motion was denied. The Chairman also stated that with regard to the motion to dismiss and the motion to rescind the order of November 13, 2002, no ruling would be made at this time. The Chairman also stated that each party would be given thirty minutes and Chief Deputy Counsel Fred Gregory would let each party know when their time is up.

Mr. Camden Webb, attorney for London Wine Man spoke on behalf of his client. Mr. Webb stated that last year, Mr. Donald Kurtz wanted to sell his business to Tryon Distributing and he agreed to do this in the form of a standard asset sale. In the process of preparing for the asset sale, he informed all his suppliers about the proposed sale to Tryon Distributing and provided some information about Tryon to them. All the suppliers approved Tryon Distributing, except for one and that was Renwood Winery. Mr. Webb stated that when Renwood Winery refused to approve the transfer, London Winery took action by excluding the brand from the asset sale and retained the brand rights. London Wine Man then wanted Tryon to be the sub jobber and to sell their brand. The contract that Renwood Winery drafted stated that London Wine Man could resell their wines to anyone they wanted to. But after the brand transfer, Renwood Winery refused to sell anything to London Wine Man or to deal with them and also refused to obey the Commission's order dated November 13, 2002. Mr. Webb stated that the reason London Wine Man was terminated was because they proposed a sale of the brand. Mr. Webb presented exhibits, which were already in the record. Mr. Webb further stated that when the CEO of Renwood Winery stated that London Wine Man was behind on their bills and that was the reason for termination, London Wine Man, immediately sent Renwood Winery a check for \$25,000.00. Mr. Webb also stated that when Renwood Winery stated that they didn't want London Wine Man because they were going out of business, London Wine Man excluded the brand and set up a sub jobber, just like the contract lets them do.

Mr. John Hasty, attorney for Renwood Winery spoke on behalf of his client. Mr. Hasty stated that the Hearing Officer's findings, conclusions and recommendations were correct, well founded, and based upon the testimony and evidence presented at the hearing. He stated that were only two issues before the Commission. The first issue was, did London Wine Man have standing to raise the issue of whether the contract was lawfully terminated and the second issue was whether the distributorship agreement was properly terminated. Mr. Hasty stated that according to the statute, if ownership changes or 25% or more of the stock is sold to someone who is not a stockholder, the permit then automatically expires. He further stated that London Wine Man violated both of the rules and in addition violated the provision that they failed to surrender their permits on the transfer and also failed notify the Commission of this. Mr. Hasty stated that the change in ownership occurred on October 28, 2002 (upon transfer of more than 25% of stock to London Wine Man's vice-president, Mr. Cohen); therefore the permits expired on the same date. He also stated that since that had occurred, they had no standing to bring this complaint before the Commission, that the contract was improperly terminated by London Wine Man.

Mr. Hasty also pointed out that the sale of London Wine Man's assets and going out of business acted as their termination of the agreement. After October 28, 2002, London Wine Man was out of business, more specifically out of the wine wholesale business. Mr. Hasty stated that London Wine Man's customers were told that they were out of business and London Wine Man's supply of Renwood Winery wine was transferred to Tryon's warehouse. Tryon Distributing then sold the supply to retail customers and London Wine Man paid for it. Mr. Webb stated that Mr. Donald Kurtz testified that although a sub jobber agreement could be set up, no such agreement was set up. Mr. Hasty further stated that Renwood Winery gave London Wine Man 90 day's written notice of termination of agreement on October 7, 2002. The reason was that London Wine Man had gone out of business, not because London Wine Man was selling a brand to Tryon Distributing. He also stated that Renwood Winery had reasons for termination of the agreement and the reasons were delinquency in the payment of invoices, attempting to sell the Renwood brand without their approval and failure to sell their allocated wines.

Mr. Keith Kapp, attorney for London Wine Man spoke in rebuttal and stated that London Wine Man had been paying their invoices that way for years and no one had said anyone about it. Mr. Hasty, attorney for Renwood Winery also spoke in rebuttal and stated that the statute does not say that they have to sell wine to London Wine Man under that agreement; it merely says that the agreement stays in effect. Whatever the effect of the agreement is what they have to abide by. The effect of the agreement in this case after October 28, 2002, was that London Wine Man did not have a permit to sell wine and they were out of business. Mr. Hasty stated because of those reasons, the effect of the agreement is that Renwood Winery is not required to sell them wine under those arrangements. Renwood Winery sent London Wine Man a letter stating that if Renwood's understanding was wrong and that were back in business and able to act as a wholesaler, then London Wine Man was suppose to let Renwood Winery know. But they had not responded to the letter.

The Chairman thanked the attorneys on both sides and stated that the Commission would need to go into closed session for the matter of consulting with the attorneys.

#### **CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF**

The Chairman made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of consulting with staff attorneys and for the purpose of discussing a pending case involving Renwood Winery and London Wine Man.



**-- CONFIDENTIAL --**

**CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF**

**Minutes**

The Chairman made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of consulting with staff attorneys and for the purpose of discussing a pending case involving Renwood Winery and London Wine Man.

Chief Deputy Counsel Fred Gregory stated that he didn't know of any wholesaler who does not have a warehouse, who does not have a staff, who does not have any trucks and all he does is get brands and have other people sell it. The Chairman stated that she thought there was a requirement that stated if they (London Wine Man) owned the inventory but it's sitting on Tryon's warehouse floor, then they should have a permit for that address. Commissioner Wright asked what was the actual law on the transfer of ownership. The Chairman stated that the current law was that stock does not have to be represented by a certificate.

Assistant Counsel Clayton Summers stated that he felt that the Commission should probably start with what they thought the decision was going to be and then based on what the decision is going to be, decide what you wanted to do to solidify that, knowing that it's going to be appealed. The Chairman stated that her inclination was to adopt the recommended decision of the Hearing Officer. Commissioner Wright stated that he felt the same way. Mr. Summers advised that the Commission look at Mr. Hasty's three arguments and discuss whether he was right or not. Amy Yonowitz, Assistant Attorney with the Attorney General's Office, stated that once they went back into open session, the Commission needed to say that they reserve the right to make additional findings of fact that are agreeable to the Commission. The Chairman stated they could do a teleconference with Commissioner Wright to discuss this. The Chairman made a motion to continue the closed session deliberation in order to consult with legal counsel and will set the session to reconvene on April 17, 2003 at 10:00 a.m.

**END OF CLOSED SESSION**

**OPEN SESSION, APRIL 11, 2003**

The Chairman made motion to go back into open session and she also stated that the Commission is continuing the closed session until April 17, 2003 at 10:00 a.m., and Commissioner Wright will be there via telephone.

**NOTE: The April 17, 2003 Closed Session was further continued until April 17, 2003, in order to work on the final order in the case London Wine Man, Inc. v. Renwood Winery, Inc.**

**April 22, 2003 CONTINUATION OF CLOSED SESSION**

The Chairman stated that Commissioner Wright was present via teleconference. Commissioner Wright made a motion to adopt the recommended decisions submitted by the hearing officer, Timothy W. Morse, in its entirety including all findings of fact, conclusions of law contained therein and to incorporate said findings and conclusions as a part of this final decision and order. Seconded by the Chairman. So Ordered. The Chairman asked Commissioner Wright if he had any changes or comments with regard to the final decision and order. Commissioner Wright stated that he had no changes or comments to make. The Chairman made a motion to adopt the Final Decision and Order in the matter of London Wine Man vs Renwood Winery and as a part of that Final Decision and Order incorporate Mr. Timothy Morse's Recommended Decision dated March 6, 2003 as a part of the order. Seconded by Commissioner Wright.

The Chairman made a motion to go back into open session in order to read the decision. Seconded by Commissioner Wright. So Ordered.

**END OF CLOSED SESSION**

## **OPEN SESSION**

The Chairman brought the attorneys from both sides back into open session via telephone conference call. The Chairman stated that Commissioner Wright was also present via telephone. She stated that the Commission's decision in *The London Wine Man, Inc. v. Renwood Winery, Inc.*, was to adopt the Recommended Decision of Mr. Timothy Morse's in its entirety and to incorporate Mr. Morse's decision into the final decision and order. The Chairman stated that the decision would be faxed and mailed to the parties' attorneys today.

## **VIII. OTHER BUSINESS**

No other business, new or old, was heard. The Chairman made a motion to adjourn the meeting. Seconded by Commissioner Wright. So ordered.

With no further business, the meeting adjourned.

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Ann Scott Fulton, Acting Chair  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Tiffany C. Goodson, Legal Division